

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

KENNETH DAFT,

Petitioner,

vs.

Civil Action No. 2:03 CV 102  
(Maxwell)

THOMAS McBRIDE, Warden,

Respondent.

ORDER

It will be remembered that the above-styled civil action was instituted on November 24, 2003, when *pro se* Petitioner, Kenneth Daft, an inmate at Mt. Olive Correctional Complex in Mt. Olive, West Virginia, filed a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody.

It will further be remembered that the above-styled civil action was referred to United States Magistrate Judge John S. Kaull for initial review and report and recommendation, pursuant to Rule 83.13 of the Local Rules of Prisoner Litigation Procedure.

On April 1, 2005, United States Magistrate Judge John S. Kaull filed an Opinion/Report And Recommendation in the above-styled civil action, wherein he recommended that the Petitioner's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody be denied and dismissed with prejudice.

Magistrate Judge Kaull's Report And Recommendation expressly advised the Petitioner, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections to said Report And Recommendation within ten days after being

served with a copy of the same.

The Court's review of the docket in the above-styled action has revealed that no objections to Magistrate Judge Kaull's April 1, 2005, Opinion/Report And Recommendation have been filed by the Petitioner and that this matter is now ripe for review.

Upon consideration of Magistrate Judge Kaull's April 1, 2005, Opinion/Report and Recommendation, and having received no written objections thereto<sup>1</sup>, it is

**ORDERED** that the Opinion/Report And Recommendation entered by United States Magistrate Judge John S. Kaull on April 1, 2005 (Docket No. 9), be, and the same hereby is, **ACCEPTED** in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the Petitioner's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Docket No. 1), be, and the same is hereby, **DENIED** and **DISMISSED, with prejudice**.

It is further

**ORDERED** that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in

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<sup>1</sup>The failure of a party to objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4<sup>th</sup> Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

ENTER: March 13, 2007

  
United States District Judge